

WO

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Albert L Jacobs, Jr., et al.,
Plaintiffs,
v.
Wheaton Van Lines Incorporated,
Defendant.

No. CV-17-03967-PHX-JAT

ORDER

Pending before the Court are Plaintiffs' Motion for a Temporary Restraining Order ("Motion for TRO") (Doc. 11), Plaintiffs' Motion for a Preliminary Injunction ("Motion for Preliminary Injunction") (Doc. 13), and Plaintiffs' Motion for Default Judgment (Doc. 14).¹ The Court now rules on the motions.

I. MOTIONS FOR TRO AND PRELIMINARY INJUNCTION

A. Background

On December 6, 2017, Albert Jacobs and Linda Jacobs (collectively and individually, “Plaintiffs”) filed the pending Motion for TRO (Doc. 11) and Motion for Preliminary Injunction (Doc. 13) against Wheaten Van Line, Inc. (“Defendant”). Plaintiffs seek a TRO and preliminary injunction to prevent Defendant from maintaining

¹ For any future filings, the Court directs Plaintiffs' attention to District of Arizona Local Rule Civil 7.1(b), which provides in part: "All pleadings, motions and other original documents filed with the Clerk shall be in a fixed-pitch type size no smaller than ten (10) pitch (10 letters per inch) or in a proportional font size no smaller than 13 point, including any footnotes." LRCiv 7.1(b) (emphasis added).

1 a state court action in Maricopa County Superior Court against Plaintiffs. (*See* Doc. 11 at
2 1-2). The Maricopa County Superior Court previously set December 14, 2017 as the date
3 for Arbitration in Defendant’s state court claim against Plaintiffs. (*See id.* at 1).

4 **B. Legal Standard**

5 The test for a TRO is the same test as for a preliminary injunction. *See, e.g., Ron*
6 *Barber for Cong. v. Bennett*, CV-14-02489-TUC-CKJ, 2014 WL 6694451, at *2 (D.
7 Ariz. Nov. 27, 2014). Under Rule 65(b) of the Federal Rules of Civil Procedure
8 (“FRCP”), plaintiffs seeking a TRO or a preliminary injunction must establish: (1) a
9 likelihood of success on the merits, (2) a likelihood of irreparable harm in the absence of
10 preliminary relief, (3) the balance of equities tips in their favor, and (4) an injunction is in
11 the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 129 S. Ct. 365,
12 374, 172 L. Ed. 2d 249 (2008). Alternatively, the Ninth Circuit also provides that, when
13 the latter requirements are met, “[a] preliminary injunction is appropriate when a plaintiff
14 demonstrates . . . that serious questions going to the merits were raised and the balance of
15 hardships tips sharply in the plaintiff’s favor.” *Alliance for the Wild Rockies v. Cottrell*,
16 632 F.3d 1127, 1134-35 (9th Cir. 2011) (internal citations and quotations omitted).

17 **C. Analysis**

18 “The *Younger* abstention doctrine, as originally articulated by the Supreme Court,
19 forbids federal courts from staying or enjoining pending state court proceedings.”
20 *AmerisourceBergen Corp. v. Roden*, 495 F.3d 1143, 1147 (9th Cir. 2007) (internal
21 quotations omitted) (citing *Younger v. Harris*, 401 U.S. 37, 41 (1971)); *see also* 28
22 U.S.C. § 2283; *Middlesex County Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S.
23 423, 431 (1982) (“*Younger v. Harris*[], and its progeny espouse a strong federal policy
24 against federal-court interference with pending state judicial proceedings absent
25 extraordinary circumstances.”). Here, the Court may not intervene in the Maricopa
26 County Superior Court proceedings referenced by Plaintiffs. As such, Plaintiffs have
27 failed to demonstrate any likelihood of success on the merits because this Court is unable
28

1 to provide the relief Plaintiffs seek. Accordingly, Plaintiffs' Motion for TRO (Doc. 11)
2 and Motion for Preliminary Injunction (Doc. 13) are hereby denied.²

3 **II. MOTION FOR DEFAULT JUDGMENT**

4 On December 6, 2017, Plaintiffs filed the pending Motion for Default Judgment
5 (Doc. 14).

6 **A. Background**

7 Plaintiffs argue that "Defendant was serve[d] November 3rd[,] 2017," but
8 Defendant failed to answer or otherwise plead to the Complaint (Doc. 1) in a timely
9 manner. (Doc. 14 at 2). Under FRCP Rule 12, a defendant must serve an answer "within
10 21 days after being served with the summons and complaint." Under FRCP Rule 55(a), if
11 a properly served party fails "to plead or otherwise defend, and that failure is shown by
12 affidavit or otherwise, the clerk must enter the party's default." In this case, Defendant
13 did not answer or otherwise plead within 21 days of the day Defendant was purportedly
14 served. Defendant first responded to Plaintiffs' Complaint (Doc. 1) several days after this
15 deadline with a Motion to Dismiss (Doc. 16) filed on December 8, 2017.

16 **B. Legal Standard**

17 "As a general rule, default judgments are disfavored; cases should be decided
18 upon their merits whenever reasonably possible." *Westchester Fire Ins. Co. v. Mendez*,
19 585 F.3d 1183, 1189 (9th Cir. 2009) (citation omitted); *see also Eitel v. McCool*, 782
20 F.2d 1470, 1472 (9th Cir. 1986) (explaining that the "strong policy underlying the
21 Federal Rules of Civil Procedure favors decisions on the merits"). Districts courts have
22 "broad discretion" in ruling on motions for default judgments. *Lowery v. Barcklay*, CV-
23 12-1625-PHX-RCB, 2013 WL 2635576, at *4 (D. Ariz. June 12, 2013); *see, e.g., Draper*
24 *v. Coombs*, 792 F.2d 915, 924-25 (9th Cir. 1986) (holding that a district court did not
25 abuse its discretion in denying a motion for default where a defendant answered late, but
26 the plaintiff did not show prejudice from the delay); *Aldabe v. Aldabe*, 616 F.2d 1089,

27
28 ² The Court need not analyze the remaining elements of the *Winter* test because
Plaintiffs failed to establish the first element and must establish all elements in order for
their motion to succeed.

1 1092 (9th Cir. 1980) (holding that a district court did not abuse its discretion in declining
2 to enter a default judgment in favor of a plaintiff where the plaintiff's substantive claims
3 lacked merit). The Ninth Circuit Court of Appeals provides that a district court may look
4 at the following factors in considering a motion for default:

5 (1) the possibility of prejudice to the plaintiff, (2) the merits
6 of plaintiff's substantive claim, (3) the sufficiency of the
7 complaint, (4) the sum of money at stake in the action; (5) the
8 possibility of a dispute concerning material facts; (6) whether
the default was due to excusable neglect, and (7) the strong
policy underlying the Federal Rules of Civil Procedure
favoring decisions on the merits.

9 *Eitel*, 782 F.2d at 1471-72.

10 **C. Analysis**

11 Here, several factors weigh in favor of denying the instant motion. Plaintiffs have
12 not made any showing of prejudice as a result of Defendant's failure to comply strictly
13 with the time requirements of FRCP Rule 55(a) because Plaintiffs seek relief that this
14 Court may not provide. *See supra* part I(C). Additionally, Plaintiffs have not shown any
15 likelihood of success on the merits. Defendant fails to provide an excuse for its late
16 answer, but Plaintiffs similarly fail to provide a compelling reason to overcome the strong
17 policy preference against default. *See Eitel*, 782 F.2d at 1472. Accordingly, Plaintiffs'
18 Motion for Default Judgment (Doc. 14) is hereby denied.

19 Plaintiffs have 30 days from the date of service of Defendant's pending Motion to
20 Dismiss (Doc. 16)—which occurred on December 8, 2017—within which to serve and
21 file a responsive memorandum in opposition. *See LRCiv. 12.1(b), 56.1(d).*

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **III. CONCLUSION**

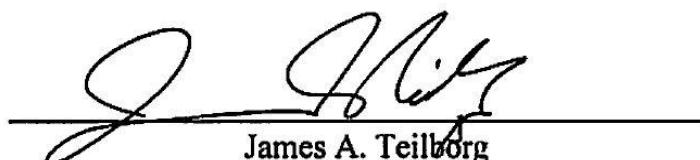
2 For the reasons set forth above,

3 **IT IS ORDERED** that Plaintiffs' Motion for TRO (Doc. 11) is **DENIED**.

4 **IT IS FURTHER ORDERED** that Plaintiffs' Motion for Preliminary Injunction
5 (Doc. 13) is **DENIED**.

6 **IT IS FURTHER ORDERED** that Plaintiffs' Motion for Default Judgment (Doc.
7 14) is **DENIED**. The Clerk of the Court shall not enter judgment at this time.

8 Dated this 13th day of December, 2017.

9
10 
11 James A. Teilborg
12 Senior United States District Judge

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28